INDERJIT SINGH v. JINDER PAL

[C.A. (Wee Chong Jin C.J., Choor Singh & Kulasekaram JJ.) November 25, 1975]

[Singapore — Civil Appeal No. 25 of 1975]

Family Law — Divorce — Marriage in Johore Bahru — Parties domiciled in Singapore — Female party under-aged — Whether marriage valid — Women's Charter, 1961, s. 9.

This was an appeal from the decision of the High Court ([1975] 2 M.L.J. 127) dismissing a petition for divorce.

Held, allowing the appeal: section 9 of the Women's Charter applied only to marriages solemnised in Singapore. It did not purport, and was clearly not intended by the Legislature, to deal with a person's personal capacity to enter into a contract of marriage. It merely invalidated a marriage solemnised in Singapore where either party was below the age of eighteen unless previously authorised by a licence granted by the Minister.

COURT OF APPEAL.

Gurbachan Singh for the appellant.

Respondent not represented and absent.

Wee Chong Jin C.J. (delivering the judgment of the Court): The parties in this appeal are both Singapore citizens and domiciled in Singapore. They contracted a marriage in Johore Bahru, Malaysia, on January 22, 1967 when the appellant was 23 and the respondent 15 years old. One week after the marriage the respondent deserted the appellant by returning to her parents' home and refusing to resume cohabitation with him.

The appellant petitioned the High Court to dissolve the marriage on the ground of desertion. The petition was uncontested. The learned trial judge dismissed the petition, holding that the marriage was invalid for want of capacity on the part of the respondent by virtue of the provisions of section 9 of the Women's Charter (No. 18 of 1961). This section, as it was at the date of the marriage, reads as follows: —

"9. Any marriage purported to be solemnized under this Part of this Ordinance shall be invalid if at the date of the marriage either party is under the age of eighteen years unless the solemnization of such marriage was authorized by a licence granted by the Minister under the provisions of section 20 of this Ordinance."

The learned trial judge held that the law of Singapore prohibits a marriage where either party is under the age of eighteen unless the solemnisation of such marriage was authorised by a licence granted by the Minister. Applying the well-recognised principle of law that the question of personal capacity to enter into a contract of marriage is to be decided by the law of domicile, the learned trial judge held that as both parties were domiciled in Singapore at the date of the marriage, the marriage was invalid because the respondent was then under the age of eighteen.

The appellant appealed contending the parties were, by the law of Singapore, not prohibited by a personal incapacity from contracting a valid marriage in Johore Bahru, Malaysia, in January 1967. It was never in doubt that under the religion, custom or usage of both parties, they could lawfully marry even though one of them was under the age of eighteen or was 15 years of age at the time of the marriage. It was also never in doubt that the marriage was valid according to the law of the country where it was celebrated.

We allowed the appeal and now proceed to give our reasons. In our opinion section 9 of the Women's Charter applies only to marriages solemnised in Singapore. It does not purport, and is clearly not intended by the Legislature, to deal with a person's personal capacity to enter into a contract of marriage. It merely invalidates a marriage solemnised in *Singapore* where either party is below the age of eighteen unless previously authorised by a licence granted by the Minister. If the Legislature had intended to legislate on the capacity of persons domiciled in Singapore to contract marriages, wherever celebrated, the section would have provided as follows: —

"9. A marriage between persons either of whom is under the age of eighteen shall be void unless. . . ."

Our interpretation of section 9 is confirmed by the next section, section 10, which reads as follows: —

"10.–(1) A marriage solemnized between a man and any of the persons mentioned in the first column of Part I of the First Schedule to this Ordinance, or between a woman and any of the persons mentioned in the second column of the said Part I shall be void."

The words "in Singapore" do not appear after the word "solemnized" and accordingly a marriage, wherever solemnised or celebrated, between persons domiciled in Singapore within the prohibited degrees set out in the First Schedule is *ipso facto* void unless the provisions of section 10(2) apply. For these reasons the appeal was allowed.

Appeal allowed.

Solicitors: *Rikhraj & Co.*